

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

COR CLEARING, LLC,)
)
Plaintiff,) 8:15CV317
)
vs.) Omaha, Nebraska
) November 10, 2015
CALISSIO RESOURCES GROUP,)
INC., et al,)
)
Defendants.)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LYLE E. STROM
SENIOR UNITED STATES DISTRICT JUDGE

A-P-P-E-A-R-A-N-C-E-S

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1 (At 8:57 a.m. on November 10, 2015, with counsel for the
2 parties present, the following proceedings were had:)

3 THE COURT: This is COR Clearing, LLC, a Delaware
4 limited liability company, plaintiff, versus Calissio
5 Resources Group, Adam Carter, Signature Stock Transfer, and a
6 number of those.

7 For the plaintiff, COR Clearing, could we have appearance
8 of counsel, please. Mr. Hargens -- Mr. Hilgers, pardon me.

9 MR. HILGERS: Good morning, your Honor. Mike
10 Hilgers, counsel for plaintiff COR Clearing, as well as
11 counsel for interested party, Alpine Securities.

12 Next to me, your Honor, is Mr. Carlos Salas, who is the
13 CEO of COR Clearing, and Mr. --

14 THE COURT: What's -- how's he spell his name?

15 MR. HILGERS: S-a-l-a-s.

16 THE COURT: All right.

17 MR. HILGERS: And Mr. Mark Bell --

18 THE COURT: Bell?

19 MR. HILGERS: Yes, sir.

20 THE COURT: Who is going to do the speaking, you?

21 MR. HILGERS: I'll do the speaking, your Honor.

22 THE COURT: And then for the defendant?

23 MR. HARGENS: Your Honor, actually I represent two
24 interested parties, TD Ameritrade Clearing, Inc., and TD
25 Ameritrade, Inc. They received notice pursuant to the Court's

1 instructions and we filed an opposition to the motion. That's
2 why we're here today.

3 It's William Hargens representing those two entities. To
4 my right is Chad Johnsen -- that's with an e-n -- who has
5 submitted a declaration in support of our opposition. He's
6 with TD Ameritrade, Inc. And then to my far right is James
7 Vihstadt, V-i-h-s-t-a-d-t. And Mr. Vihstadt is an in-house
8 attorney at TD Ameritrade.

9 THE COURT: Who are going to be the speakers?

10 MR. HARGENS: I will be speaking --

11 THE COURT: Mr. Hilgers and Mr. Hargens?

12 MR. HARGENS: Yes, your Honor.

13 THE COURT: All right.

14 Well, the matter's -- we're having a hearing today with
15 respect to the application that's been made for appointment of
16 a receiver.

17 So Mr. Hilgers, I'll put the ball in your court and hear
18 from you.

19 MR. HILGERS: Thank you, your Honor.

20 Your Honor, on behalf of COR Clearing, we're very
21 grateful to have this time in front of you this morning,
22 partly --

23 THE COURT: Don't thank me. I was trying to find
24 some way to avoid this.

25 MR. HILGERS: I understand, your Honor. Part of the

1 reason is because we have -- my client has lost nearly
2 \$5 million. And there's a remedy that exists to repair that
3 loss that we have -- for which we have 90 days to trigger that
4 remedy, and we're about at day 86.

5 THE COURT: We think it ends next week, but you folks
6 think it ends Thursday or Friday, I think.

7 MR. HILGERS: Conservatively, we've calculated about
8 Friday, your Honor, conservatively.

9 THE COURT: Well, I'm going to -- whatever I do, I'm
10 trying to -- going to try to get something filed today on it.

11 MR. HILGERS: Thank you very much, sir.

12 The other reason we're grateful is because the pleadings
13 and the briefings -- there's been a lot of paper submitted in
14 front of the Court and a lot of discussion about what really
15 are pretty complex, complicated financial transactions. And I
16 think it's helpful to take a step back and talk about what's
17 undisputed because what is undisputed is very clear and, I
18 think, supports the right -- the relief that we seek.

19 And what is undisputed, your Honor, is that the defendant
20 Calissio committed a fraud and that fraud resulted in nearly
21 \$5 million being erroneously and wrongly debited from my
22 clients' COR Clearing and Alpine Securities accounts.
23 Undisputed.

24 It is also undisputed that that money then flowed to
25 member firms. And some of that money, at least \$1.7 million,

1 and potentially as much as most or nearly all of those funds,
2 went to the defrauding party. It's undisputed.

3 It's also undisputed, your Honor --

4 THE COURT: To Calissio?

5 MR. HILGERS: To Calissio, yes, sir.

6 THE COURT: All right.

7 MR. HILGERS: In a minute, I'll want to -- we have a
8 demonstrative. I'll walk through the transactions and provide
9 some more detail. But at a high level, your Honor, this is
10 the situation we're dealing with, and it's undisputed.

11 It is also undisputed that the clearing house entity,
12 DTC -- there's been a lot of discussion of DTC that's at the
13 center of this transaction -- it has a rule that was drafted
14 and agreed upon long before we ever stepped into this
15 courthouse, that if applied, would reverse that transaction,
16 would reverse the debit, would reverse the credit; my clients
17 would be made whole.

18 It's undisputed if Calissio happened to show up today and
19 tell DTC that they wanted to reverse that transaction, there
20 would be no objection -- there may be some other legal
21 remedies, but there wouldn't be an objection process, there
22 wouldn't be an objection to that action.

23 The only reason we're here before your Honor is because
24 Calissio is the defrauding party. And they hold the keys to
25 resolving the fraud. Normally when the fraud occurs, you

1 identify the fraud and the money's gone.

2 In this instance, we have a rare opportunity. We know
3 the fraud happened, we know it existed, and we've got a remedy
4 to undo it if we act quickly.

5 The only reason we're here, your Honor, is because
6 Calissio won't -- because they profit from the fraud, they
7 won't pull the trigger on the remedy. And in consultation
8 with DTC, DTC has told us that if -- with a limited purpose
9 receiver, which is fully within this court's powers to grant,
10 that limited purpose receiver standing in the shoes legally of
11 Calissio doing one thing and one thing only, which is
12 requesting that DTC trigger the agreed-upon rule to undo those
13 transactions. That's a one-page letter, your Honor, maybe two
14 paragraphs at most.

15 And if they do that, that's the only responsibility of
16 this receiver. It's not a complex accounting. There's not
17 other actions that we ask the Court -- ask the receiver to
18 take. That one action. That one action will put the parties
19 back to where we started from the beginning, will undo this
20 harm.

21 If the Court doesn't act, if the Court doesn't act and
22 this 90-day period expires, my clients will have lost almost
23 \$5 million through absolutely no fault of their own that was
24 just taken from their accounts and they won't be able to get
25 it back. Calissio is a sham company that has no assets and

1 has absconded with the money. This is the one remedy in front
2 of --

3 THE COURT: Where are we going to get the money then?

4 MR. HILGERS: Where -- the money will come -- so the
5 transactions were credited to the member firms. There are 67
6 member firms that were provided notice by COR Clearing as part
7 of your Honor's order. We got that list from DTC.

8 Those 67 firms were credited various sums as part of the
9 debit that was taken from my client's accounts. Of those 67
10 firms, only one has objected. So the others have -- they're
11 not objecting, DTC is not objecting to this process.

12 So what the four corners of the receiver will do is only
13 reverse the credit to the member firms. It won't necessarily
14 do anything to any shareholders down the line. It's only the
15 member firms.

16 And we know some firms actually have held on to that
17 money in light of the lawsuit that's been filed in front of
18 the Court. So -- and they're waiting for some resolution.

19 So that money will come from the member firms, not from
20 the shareholders. I want to talk about that in a few minutes.
21 But that's kind of a red herring at least for what the
22 receiver is being asked to do. This receiver has one purpose,
23 reverse the credit to the member firms. If it doesn't act,
24 we're going to lose \$5 million through no fault of our own.

25 Now we've created this demonstrative, your Honor, to walk

1 through some of the transaction. There's been a lot of
2 complicated -- in the briefing, it's kind of a complicated
3 financial transaction. But at a very high level, Judge, it's
4 really pretty straightforward.

5 And if I do this right -- okay. In a normal transaction,
6 Judge -- not one that we have today. The one we're dealing
7 with today is not normal. There's a fraud.

8 In a normal transaction, a company would announce some
9 amount of dividend. They would pay -- say they wanted to do a
10 \$1.3 million dividend. They would give that money to DTC.
11 That's this clearing house agency.

12 Without DTC there, Judge, it would be very difficult and
13 time-consuming to figure out who has the shares -- for the
14 company to figure out who has the shares and to pay off the
15 money individually. So DTC provides a service where they are
16 the clearing house. They get the money in and they distribute
17 it out. Normally, in a normal transaction, that money goes to
18 the entities that hold the shares.

19 Now, in some instances in the way that DTC accounting
20 works, sometimes it is possible for an erroneous dividend,
21 say, to be paid. And in that instance, DTC has a rule that
22 allows for those to be undone within 90 days. We've talked a
23 lot about it. In the normal case though, the money goes to
24 where it should go, DTC performs the role it should, and we're
25 just fine. That was not the case that we had here.

1 So what happened here is Calissio announced a dividend
2 payment of \$1.3 million. Now it put a restriction on that
3 payment. And it said that only those parties -- I'm sorry,
4 only people, individuals or entities that own shares with a
5 record date of June 30th -- in other words, they were in
6 existence by June 30th -- they would receive shares. And
7 that's a key date. If you own the share before June 30th or
8 it was in existence, you get a dividend; if you own it
9 afterwards, you don't. You don't get a dividend.

10 So we don't know how much money -- we think it's less
11 than \$1.3 million, but Calissio provided some level of funding
12 to DTC to pay some of these dividends. So we know that.

13 As part of this though, your Honor, what we also know is
14 that almost \$5 million were taken from COR Clearing and Alpine
15 Securities' accounts.

16 Now I'm going to talk about why that happened. It's this
17 interim accounting. It's been in the briefs. It's been in a
18 lot of the discussion.

19 But putting aside the why for a moment, it is undisputed,
20 your Honor, undisputed, that that was erroneous. And I would
21 like to call up, if I might -- we have an email that's in the
22 record, Judge. It's an August 25th, 2015, email. Do you have
23 that in front of you, your Honor?

24 THE COURT: I do not.

25 MR. HILGERS: Well, it's on your screen. We don't

1 have printed copies.

2 So this is an email from a Mr. Adam Carter. And Calissio
3 is -- purports to be -- or purported to be a company -- a
4 Nevada company that invested in mining projects in Mexico. We
5 now know through an investigation that that company is a sham.
6 It has no offices; it has no assets. This individual who held
7 himself out as the president throughout this process, we think
8 -- we have reason to believe isn't even a real individual.
9 There's no such Adam Carter that might exist.

10 But at least on August 25th, your Honor, when -- and this
11 is about four days after we had notice. So we had notice that
12 DTC was going to debit the funds. We immediately sprung into
13 action. This isn't right. We contacted the appropriate
14 parties. And Mr. Carter emails Mr. Salas, who is sitting here
15 next to me, and says in the body of the email at the top, he
16 says -- we'll bring it up for your Honor.

17 He says: As you are aware -- we'll highlight it. He
18 says: As you are aware there has been a huge glitch/error on
19 how the dividend was supposed to be paid out. So this is the
20 president/agent of Calissio saying hey, you know what, guys?
21 This is wrong. This is wrong.

22 And it's not just Calissio saying that it was wrong. If
23 we could pull up TD Ameritrade's brief, which is docket number
24 41, and we'll bring it up to the screen for your Honor. This
25 is the response brief filed by TD Ameritrade.

1 And if we could turn to page 3 of that brief, at the
2 bottom, and there's a -- the last full sentence, it says: Due
3 to that fraudulent scheme, those innocent investors were
4 credited with dividends that, in hindsight, should not have
5 been credited to them.

6 Okay. So Calissio says it's an error. TD Ameritrade
7 concedes it's an error. We say it's an error. It's totally
8 undisputed.

9 How that happened I'll discuss in a second. It has some
10 complicated financial aspects. But at the end of the day,
11 your Honor, there's no dispute that there's an error.

12 The reason why this occurred -- and this is what Calissio
13 was taking advantage of in the marketplace -- is this -- DTC
14 calls it a product, but it's a service that they provide
15 called interim accounting. And what that means is -- DTC
16 again is at this hub of the wheel. And they pull in money,
17 and they take -- and they expend -- and they pay out
18 dividends. So they pull in and they pay out.

19 And they pull in from people who own the shares as well.
20 So if you have a share and you sell that share and it has a
21 right to a dividend, the way that it works is your account, if
22 the purchaser of the share has a right -- purchases a right to
23 the dividend, they get a credit from your account, and then
24 you get the dividend paid from the company.

25 So you, if you sell the dividend, you know, you pay out

1 and you get in and you're at zero. And the purchaser of that
2 share gets the dividend. So that's how it's supposed to work
3 if they're eligible shares.

4 If it's an ineligible share and the accounting -- it
5 pulls out the debit, if it's ineligible, it won't get a
6 credit. All of a sudden the party with the share loses money
7 and doesn't get the money coming in to make it neutral.

8 And that happens sometimes. And the reason that it
9 happens is that DTC -- and they acknowledge. They say, look,
10 we don't have -- we have an imperfect process. And in the
11 vast majority of cases, your Honor, there's no real issue with
12 having an ineligible share receiving a dividend because the
13 record date and the payment date are very close together, very
14 close together.

15 And in this case, however, the record date -- that's the
16 date the shares become eligible for the dividend -- is
17 preceded, by about 45 days, the date when the payments were to
18 be made. And in that intervening period, a whole bunch of
19 shares were put on the market, none of which had any right,
20 any right to a dividend. Undisputed.

21 And what happened was DTC doesn't have a mechanism of
22 saying, well, these aren't eligible and these are. These are
23 eligible and these aren't. It just treats them all as
24 eligible.

25 And that's imperfect, and it's an imperfect system. But

1 the way that it's mitigated, that imperfection is resolved, is
2 by the mechanism that fixes errors. So DTC says okay, we
3 understand an error might occur. You might have a share that
4 we think should be eligible for a dividend that, in fact, is
5 not.

6 If that happens, we'll reverse it. And we'll have a
7 mechanism to reverse it. That's the mechanism we've been
8 talking about, the 90 days; not within two days or five days,
9 within 90 days. In fact, that mechanism, before this year,
10 used to be 120 days, your Honor. That's a long time. But now
11 it's 90 days, and they can fix it.

12 So what happened here is that COR Clearing and Alpine
13 Securities' clients sold shares that were not eligible for
14 dividends. But because DTC treated them like all the shares
15 thinking that they were eligible, they pulled out the money.
16 But because they weren't eligible for shares, there was no
17 dividend. And also because there was a fraud and there was no
18 money coming in. So all of a sudden Alpine and COR Clearing
19 are out almost \$5 million. No one disputes that that should
20 not have happened.

21 So -- can we go back to the demonstrative, please?

22 That's only half of the equation, your Honor. It doesn't
23 do Calissio very much good if all they're doing is pulling out
24 money from my clients.

25 The other half of the equation is the critical part. And

1 that is when that money came in, a lot of it, at least \$1.7
2 million and potentially much, much more, went to Calissio.
3 And we know that because Calissio participated in a public
4 share buyback program where they bought maybe 150 million
5 shares. That's just what they announced to the public. We
6 already know that they're using aliases and fictitious
7 personnel to communicate with us and with others. They may
8 have had other affiliates that aren't named Calissio that also
9 bought shares. But we know at least 1.7 million. That's in
10 Calissio's hands. That's a windfall. They're not entitled to
11 it. That's a fraud. They should not get it.

12 Now, there is a fix. We talked about it a lot but I want
13 to pull up the language.

14 If we could turn to -- if we could turn to the DTC
15 Service Guide, which is document number 22-2, and this is the
16 Guide, your Honor, that's been in a lot of the briefing. TD
17 Ameritrade, my client, everyone agrees that this is a
18 governing document for how DTC operates. And it's been quoted
19 in the briefs, but I just want to show your Honor the language
20 as it exists in the document. And if we turn to page 32 and
21 if we could highlight the About Charge-Back and Adjustments.

22 It says: On occasion, after crediting participants with
23 a dividend or interest payment, DTC may have to create a post
24 allocation rate change which may result in either additional
25 credit or a debit to your account. Reasons to this include

1 but are not limited to an error on the part of DTC, the paying
2 agent, trustee, or issuer, or a change in the principal factor
3 or rate on CMO/ABS security.

4 You'll note at the bottom, just for the record, it says
5 -- where it says "Note" that's effective January 1st. It
6 actually went from 120 days to 90 days. So it used to
7 actually be a lot longer of a period of time.

8 That's the trigger, your Honor. It's baked into the
9 system. It's hard wired into the system. Before we ever
10 stepped into this courtroom, the member firms agreed to this
11 system and contemplated that an error could occur and the
12 credit from the member firm could be reversed. It's
13 contemplated in the system.

14 The only issue and the only reason we're here is because
15 the only way that can be triggered is through the issuing
16 party Calissio. They're the fraudulent party. This doesn't
17 contemplate what happens when a fraudulent party -- this
18 contemplates normal business transactions. So it doesn't
19 contemplate who should make -- who should make -- who's able
20 to ask for -- or a request to trigger this remedy.

21 And that's why COR Clearing can't just go to DTC and say
22 well, it's an error and you should trigger it, because DTC
23 says you're right, it is an error, but you're not Calissio.
24 We need Calissio. Well, Calissio is in Mexico or gone
25 somewhere. They're gone.

1 The only way that we can pull that trigger, pull that
2 failsafe, remedy the situation recording to the rules of the
3 game, is by having a receiver standing in the shoes of
4 Calissio and doing what they otherwise have every right to do
5 and that is exactly what we're asking the Court to do, just
6 that remedy.

7 If we could go back to the demonstrative? We have a few
8 slides, your Honor. We will -- we don't have a hard copy of
9 these slides because they dynamically build afterwards. If
10 the Court would like, we can email the Court a copy of these
11 slides for reference.

12 Again we're focusing on the undisputed facts. There are
13 some disputed facts. There's been the briefing on some side
14 issues. At the end of the day, the undisputed facts
15 establish, under the Eighth Circuit authority and this court's
16 equitable powers under Rule 66, that a receiver should be and
17 must be granted.

18 The first is that we have a valid claim. There is no
19 doubt we have a valid claim. In fact, we have a claim against
20 Calissio and Calissio has defaulted. They have not shown up
21 in this courthouse to defend themselves. We had monies
22 wrongly taken from us. There's no doubt we have a valid
23 claim.

24 There's also no doubt really that this will do more good
25 than harm. And it's critical to understand this point because

1 there's some suggestion, well, you were balancing what might
2 be done to shareholders -- which we'll get to in a minute, it
3 doesn't really directly impact shareholders. We're going to
4 have to balance that with what maybe -- what you did, what COR
5 Clearing did, how do we do that balancing?

6 Well, the reality is, Judge, this balancing has been done
7 for us already. This is part of the rule, baked into the
8 system. DTC and the member firms decided that the way to
9 solve -- it was a good -- it was a good procedure to have, a
10 remedy to possible errors. They've already decided that's
11 good. In fact, it would do more harm than good to refuse to
12 trigger that remedy because not only would it impact my client
13 severely and I think render a severe injustice to my clients,
14 but it would also upset settled expectations about how the
15 system should work. Because once you say this rule can't
16 apply because some fraudulent party, then my clients don't
17 have the benefit of resolving errors. And that's -- we submit
18 that's not a good thing.

19 Briefly, your Honor, some of the other factors, really
20 the only remedy available to us -- another one of the factors
21 under the Eighth Circuit framework, this is the only remedy to
22 us. DTC has told us -- we work collaboratively with DTC.
23 They said look, if you get a limited purpose receiver, we'll
24 undo it. If you get that receiver, we'll undo it. If we
25 don't, we can't. And if we can't, and if we can't do it in

1 the next four to six days, however you calculate it, that
2 money is gone. Calissio is a shell company. It has no assets
3 in the United States. It's gone. The only remedy that we
4 have is a receiver and a receiver appointed in the next couple
5 of days.

6 There's also -- briefly, your Honor, there's also little
7 doubt that one of the factors is whether a party will profit
8 from the fraud. Again, we know Calissio is getting
9 \$1.7 million at a minimum, much -- likely much higher.
10 Reversing that will -- if we don't act -- if the Court doesn't
11 act or if there's not a receiver, they'll be able to take that
12 money and run. There's no way to reach Calissio. There's no
13 way to reach them now. They're outside the power of this
14 court and they're certainly outside the power of COR Clearing.

15 There's been a lot of arguments, Judge -- I'm not going
16 to address -- we'll stand on our briefing for a lot of the
17 objections that were raised. The only objector that has come
18 forward to the court, as I mentioned of the 67 that were
19 notified, is TD Ameritrade. They raised a lot of objections,
20 a lot of which we think don't have -- aren't really related to
21 the discrete relief that we're requesting here. And a lot of
22 those objections, we'll just stand on the briefing unless, of
23 course, the Court has any questions for us.

24 But the one that I do want to address, because there's
25 been a lot of these emails coming through from people who

1 purport to be shareholders and we don't know who those people
2 are, but there's a lot -- there's a suggestion in the
3 briefing, a suggestion in the emails that if COR Clearing gets
4 their receiver, then those shareholders will be -- they will
5 be grievously harmed; and because of that harm, perhaps the
6 receiver should never -- should not be appointed in the first
7 place.

8 And I want to address that. And the first fundamental
9 point is that there's no -- they have no legal right to our
10 money. No one suggests or could suggest that this was not
11 erroneously taken from our accounts. It was taken from our
12 accounts and given -- it was a windfall. No one suggests that
13 they have any legal right to the funds of COR Clearing or
14 Alpine. And that's a really critical starting place.

15 But the second one is what I -- the second point is what
16 I mentioned before, your Honor, which is what we're asking for
17 -- I've talked a lot about the rules of the game. Well, those
18 rules only apply to DTC and the member firms. That's it. And
19 that's all we're asking for, to trigger that remedy between
20 those entities.

21 Now we know -- so it doesn't necessarily mean that these
22 shareholders will be impacted at all. We know, for instance,
23 that one -- as I mentioned, one large member firm has held
24 back the money. We know that a number of others haven't
25 objected. So we can infer, at least, from those instances

1 that potentially their shareholders won't be harmed because
2 they've taken steps.

3 But even if the member -- see, these member firms have a
4 responsibility, Judge, to their shareholders. This is penny
5 stock. This isn't IBM. This isn't HP or some blue chip
6 company. These are penny stocks. The SEC says if you're
7 going to broker for your customers to be in these arenas, you
8 need to take responsibility and inform them of the risks that
9 they could lose all their money. I mean, it's walking into
10 the casino is what this is. These are speculators, it's penny
11 stocks, and they have responsibilities.

12 So the member firms, they may decide that hey, you know
13 what? We got this credit. We had this credit that was a
14 windfall. We paid it to our shareholders, now it's reversed.
15 Those member firms may say, you know what? We shouldn't go
16 after our shareholders because we're in the wrong.
17 Potentially they're in the wrong. Potentially they had
18 notice, they didn't act; potentially their shareholders
19 detrimentally relied on their activities. We don't know.

20 But to suggest that appointing a receiver necessarily
21 means these shareholders will be harmed is just simply not
22 right. Just is not right.

23 The other point on the shareholders, we put it in a
24 supplemental reply yesterday, your Honor, and I'll just
25 briefly reiterate that reply now.

1 The stock price, when the clients -- when COR Clearing's
2 clients started selling the stock -- this is early August --
3 the dividend was at just about a penny, just a little over a
4 penny. The stock price, so the people who bought the shares,
5 was a fraction of a penny. It never went above a penny. So
6 the people buying these shares were essentially buying a share
7 and now trying to get a dividend that was in excess of what
8 they paid for the share in the first place. That's not
9 typically how markets work. Typically markets don't provide
10 that kind of windfall.

11 And so what we're saying is if you're in this market, in
12 the penny stock market, and you're trying to get a dividend
13 that's not priced -- the share that's not priced above the
14 dividend that it purports to have, you should be on notice
15 that there's a red flag here, that there's something amiss
16 because there was something amiss. And that was they were
17 buying shares that didn't have a dividend right attached to
18 them.

19 So we think the shareholder argument in sum, your Honor,
20 is a red herring. It doesn't go to the discrete relief that
21 we're seeking here today. And it ought not -- we submit it
22 ought not to dissuade the Court, if it is otherwise inclined,
23 to grant the motion and appoint the limited receiver.

24 So your Honor, we think when you just focus on the
25 undisputed facts and the limited relief that we seek, applied

1 to the rules of the game as they were instituted before we
2 walked in this courtroom, we strongly and respectfully urge
3 the Court to grant this limited relief, allow us to have the
4 receiver appointed, have this letter written. He will
5 discharge his responsibilities and we will be done.

6 So for all the reasons in our briefing and argument, your
7 Honor, if the Court doesn't have any particular questions,
8 that's all I have.

9 THE COURT: Well, I might before it's over with, but
10 let me hear from Mr. Hargens.

11 MR. HARGENS: Thank you, your Honor. May it please
12 the Court. I, too, appreciate the opportunity to be here
13 today for a couple of reasons in particular, and that is as
14 we've noted in our papers, your Honor, this is a very extreme
15 remedy that's being requested here. This isn't your
16 run-of-the-mill motion for appointment of a receiver who is
17 going to take over a business that's struggling, insolvent,
18 accused of fraud or whatever, and it's just going to manage
19 its affairs and ultimately act at the direction of the Court
20 to wind up its affairs at some point.

21 Here, the motion asks for a final judgment. If your
22 Honor grants this motion and it's acted upon by the DTC in the
23 manner that's represented here today, the case is over.

24 \$5 million gets moved back into the accounts of the plaintiff
25 and the party Alpine that stands with it through the same

1 counsel here today, and \$5 million comes out of other accounts
2 and ultimately comes out of the pockets of innocent
3 shareholders as well as, based on the representations that are
4 made here today, Calissio. Of course, Calissio's account as
5 far as we're informed is worthless. It's gone.

6 So we think it's important, your Honor, and we've
7 mentioned this in our brief, that there actually be some
8 evidence. While we obviously don't have the time or the
9 right, since we're a nonparty, to conduct discovery, but we
10 think it would be appropriate here today to put on some live
11 testimony, your Honor, to get into a few of the issues that
12 are raised and in addition to getting into the question of the
13 relief granted.

14 We have two fact witnesses here that have submitted
15 declarations. That would be Mr. Salas on behalf of COR,
16 Mr. Johnsen on behalf of TDA. And I would propose after my
17 initial remarks that I'd like to call them to the stand and
18 ask them a few questions.

19 But before doing so -- I'm not asking for leave at this
20 point to do so, but I'd like to respond to a few of the
21 comments made by Mr. Hilgers.

22 First of all, very little of what Mr. Hilgers says is
23 undisputed is, in fact, undisputed in this case. I'm going to
24 go right through the list of what he mentioned and comment on
25 those.

1 Did Calissio commit a fraud? As far as we know. Now,
2 we've not had an opportunity to conduct any discovery.
3 Calissio is not here. We can't put them on the stand to hear
4 their side of the story. But based on what COR has
5 represented in this case, it appears that there was a fraud.

6 Interestingly enough, the fraud apparently was
7 participated in by two other parties, one of whom is, I guess,
8 now in Mexico, according to COR's papers; one of whom has
9 actually entered an appearance in this case and that's the
10 transfer agent who was involved in this. And although the
11 transfer agent has filed a motion to dismiss, it's my
12 understanding that there's been no opposition filed to that.
13 And I don't know that one is due at this point, and the Court
14 obviously hasn't ruled on that.

15 But there is another party here when we start talking
16 about other remedies that may be available. We certainly have
17 one other defendant that's still standing that, as far as we
18 know, has money, that according to COR's allegations in its
19 complaint, was right in the middle of the fraud and therefore
20 should be responsible for the \$5 million that they claim that
21 they and Alpine are out.

22 So is there a dispute as to the fraud? I can't really
23 dispute it because I haven't had an opportunity to conduct
24 discovery or to otherwise investigate the background of the
25 fraud.

1 Is it undisputed that there was an erroneous credit and
2 debit as a result of these dividends that were paid on the
3 stock issued between the record date and the ex-dividend date?

4 And Mr. Hilgers did quote correctly out of our brief in
5 which -- my brief said that it appeared that, in fact, the
6 stock was not eligible for the dividend.

7 Well, I stand corrected on that, Judge. That's not
8 necessarily the case. And we're prepared to put on some
9 evidence here this morning that's going to call that into
10 question. And I'd prefer to do that through the examination
11 so as to not show my hand, as it were, on where I'm going with
12 that. But that is going to be disputed by the time we're done
13 here today.

14 They claim that most of the ill-gotten, as it were, or
15 tainted dividends went to Calissio. They say that at least
16 \$1.7 million went to Calissio. I'm not sure how we know that.
17 Now, Mr. Salas has submitted a declaration wherein he
18 indicates that based on their records ma large portion of the
19 amount went to Calissio.

20 But how do we know that? I'd like more information on
21 that. I'd like an opportunity to examine Mr. Salas about
22 that. But the point is, your Honor, that's not \$5 million.
23 1.7 million doesn't equal \$5 million. So just doing the
24 simple math, there's another \$3.3 million that went somewhere
25 else, and a million -- close to a million, 930-some thousand

1 dollars was credited to TD Ameritrade Clearing or TDAC, which
2 in turn credited its customers' account -- or the accounts of
3 TD Ameritrade's customers who bought this stock believing that
4 it was entitled to receive the dividend.

5 Now, I find it really upsetting, your Honor, that --
6 first of all, these shareholders, although you've seen the
7 emails they've been sending in, they're not here to defend
8 themselves personally, at least I don't know that anybody's
9 here on their behalf. But I think it's -- it's upsetting that
10 if you look at their first brief that was filed with this
11 Court -- and I apologize, I don't have the PowerPoint where I
12 can pull things up. But if you look at COR's first brief that
13 was filed for the Court, in footnote 3 on page 8, they say
14 shareholders innocently received dividends. Flip that around.
15 Innocent shareholders received dividends.

16 And what I'm hearing now -- in fact, in this latest
17 supplemental reply is that somehow this is all those
18 shareholders' fault, that they got what was coming to them;
19 that hey, they're speculating in penny stocks; they should
20 have known that they might have to give back the dividends
21 that were credited to their account. They should have known
22 by the basis of what they were paying that somehow -- that
23 these stocks didn't qualify for the dividends.

24 Well, the fact of it is, your Honor, these shareholders
25 had no way of knowing that the stock, if it didn't qualify for

1 dividends, in fact wasn't eligible. I mean, they have no
2 reason to know that. They are truly innocent here.

3 And at the end of the day when you're weighing the
4 equities, that's what you're weighing the equities between; is
5 between whether COR, who was as close to this fraud as you can
6 get if there was, in fact, a fraud -- in fact, it was COR who
7 cleared by, according to Mr. Salas's declaration, the issuance
8 of the 475 million shares -- 475 million shares that were
9 supposedly converted through some debt instrument that we
10 don't see in the record by their customers, Nobilis and
11 Beaufort. It was their customers. Notice, we haven't heard
12 anything in the PowerPoint, in the comments, in their briefing
13 about explaining that involvement.

14 What involvement did COR have in this conversion? What
15 did they know about the conversion of the stock that ends up
16 getting sold, supposedly a large portion of it to Calissio,
17 and apparently is also cleared through COR?

18 You know, I found it interesting that there's, I guess,
19 some accusation now that TD Ameritrade needs to police penny
20 stock investing. Well, look at the facts of this case. It's
21 COR that's involved in the issuance of 475 million shares of
22 penny stocks. It apparently cleared those stock sales. It
23 knows from its own records how much was purchased by the
24 company that defrauded it. Where were they when this policing
25 should have taken place?

1 And as we've discussed in our brief, if there are two
2 parties that are equally harmed or potentially harmed by the
3 fraud, it's the one that's the closest to the fraud. It's the
4 one that had the chance to potentially prevent it that should
5 bear the loss, not the innocent shareholders.

6 And to suggest, your Honor, that all that's going to
7 happen here is the TD Ameritrades of the world are going to
8 step up to the plate and just eat these losses, well, frankly,
9 your Honor, obviously that's not going to happen.

10 What's going to happen is that the TD Ameritrades of the
11 world are going to charge back, to the extent they can, any
12 reversal of the credits that were given for these dividends.

13 Now, in TD Ameritrade's case, they're going to be
14 short -- we'll put on evidence of this -- something in the
15 neighborhood of \$220,000, because this money doesn't
16 necessarily just stay in the accounts, it moves in and out.

17 And so even if they went back to the accounts as of -- I
18 think we calculated it last Friday and reversed the credits of
19 the dividends to those of its customers that got the credits
20 in the first place, you'd have about \$220,000 that TDA
21 couldn't just credit. They'd actually have to go to
22 collection, hire lawyers to pursue these people.

23 So at the end of the day, that's who's going to bear the
24 loss. And to suggest that the TDAs -- TD Ameritrades of the
25 world are just going to eat it is just not the case.

1 Now, there was a mention, one of its competitors, I
2 believe it's E-Trade that was holding the money and that
3 somehow this isn't going to result in a harm to a
4 shareholder -- or the shareholders.

5 Well, that's not the case. What they've done, your
6 Honor -- and we haven't at this point -- is restricted those
7 accounts so they can't take the money out. So the dividend is
8 still sitting there. And what they're going to do, if you do
9 what they want and the DTC follows through, is they're going
10 to go back into those accounts that they've restricted and
11 take that money back out. The money at the end of the day
12 comes back from the shareholders to the extent there's money
13 still there.

14 And I think it's important to understand, you know, they
15 -- COR argues in its brief that all you're going to do here,
16 your Honor, is restore the status quo ante; you're just going
17 to put everybody back where they were.

18 Well, that's not true. The only party you're going to
19 put back to where they were is COR. Again, assuming the DTC
20 carries through with what they claim it's agreed to do, and I
21 want to comment on that in a minute.

22 You can't restore the status quo ante to those
23 shareholders. You can't, because they have paid money for
24 that stock which they believed qualified for a dividend.
25 COR's not going to give them that money back. They wouldn't

1 have purchased the stock -- I mean, I think it's fair to
2 assume they wouldn't have purchased that stock but for the
3 assumption that it qualified for the dividend.

4 How are you going to restore them to the status quo ante?
5 Is COR going to give them back the money they paid for the
6 stock? I don't see that being tendered here anyway. No, you
7 can't restore them to the status quo ante. You can't restore
8 my clients to the status quo ante because if it was as simple
9 as here's credit, you're going to take it away, that's fine.

10 But what you're requiring my client to do is, first of
11 all, chase customers to the tune of, you know, almost a
12 quarter of a million dollars to get back the credits. We
13 don't know how much of that is collectable. If nothing else,
14 we've got to hire lawyers or collection agencies to go get
15 them.

16 And you've got the impact on our customer relations. I
17 mean, the fact is that, you know, we're going to have to go
18 into our customers' accounts and take money back out. That
19 doesn't make for a very happy camper when you're talking about
20 investors. So you can't restore everything to the status quo
21 ante.

22 Now, another thing that's supposedly undisputed is that,
23 first of all, the DTC rule applies in this scenario and that
24 DTC is going to follow that rule and reverse the credits and
25 debits that were issued with respect to the various clearing

1 houses.

2 If you look at the rule, your Honor -- and again, I
3 apologize, I don't have it on a PowerPoint -- but there's one
4 simple sentence. And I'll just read it. "On occasion after
5 crediting participants with a dividend or interest payment,
6 DTC may have to create a post allocation rate change" -- a
7 rate change -- "which may result in either an additional
8 credit or a debit to your account."

9 We'll put on evidence to this effect, your Honor, but
10 what that normally applies to is a simple error on the amount
11 of a dividend or an interest payment. If it's off two cents
12 one way or the other, the DTC will come back and make a post
13 allocation rate change. They'll fix the rate of the interest
14 payment or dividend.

15 Now, it's represented to the Court that there's been
16 meetings with the DTC and that the DTC has said, yup, we'll
17 fix it. We'll do what you're gonna do, just get a receiver
18 appointed and have him give us that direction.

19 Well Judge, of course, that's all hearsay. And DTC isn't
20 here. There's no declaration submitted on behalf of DTC.
21 There's been no opportunity for us to examine DTC regarding
22 this rule and whether it should, in fact, apply.

23 And as Mr. Hilgers pointed out, this is a rule that
24 applies to all member institutions. And it's just assumed
25 that all member institutions think that this is something

1 where you can just undo \$5 million in credits and debits
2 resulting from what is claimed to be a fraud.

3 Well, we don't think the rule should apply. And at this
4 point, we don't have any evidence from DTC itself that it
5 thinks that the rule applies and it's going to apply the rule.

6 I want to talk about a couple other points. I think I've
7 responded to all of what proclaim to be the undisputed
8 facts -- oh, except for one. I might not have -- I might have
9 touched on this.

10 COR claims that its only remedy here is to avail itself
11 of this rule. I've mentioned one reason why that's not true,
12 and that's that they do have a claim against a remaining
13 defendant that they say was complicit in the fraud.

14 But they also are in a position to go after their
15 customers who contributed to the fraud. And in this
16 context -- again, we don't have Nobilis and Beaufort before
17 the Court.

18 But what we do know is that Nobilis and Beaufort,
19 according to COR's own submissions, converted some alleged
20 debt to equity -- interesting the timing of that, three weeks
21 before the dividend is to be paid -- which, according to COR's
22 papers, Nobilis and Beaufort knew was not eligible for a
23 dividend.

24 They then go and dump it on the market for -- according
25 to COR again, what COR submits in their papers -- was only

1 \$700,000. That's in the case of Nobilis. They don't have an
2 exact number for COR -- excuse me, Beaufort. I, doing some
3 extrapolation, estimate that as 200,000. But at least
4 \$700,000 was received by its customer, Nobilis, as a result of
5 the sales of this stock, which Nobilis knew -- Nobilis knew,
6 according to COR, did not -- was not eligible for the
7 dividend.

8 Well, the question then is if it did that conversion
9 knowing that there was no dividend that should attach to that,
10 what obligation did they have to disclose that to the market?
11 What obligation did they have to disclose that to COR?
12 Shouldn't COR be talking to Nobilis and Beaufort about their
13 role, if any, in this supposed fraudulent scheme? So that's
14 another potential remedy.

15 In fact, the irony of this is it's Nobilis and Beaufort
16 that really get the windfall here, in addition to Calissio
17 based on what they claim was the case, because they're the
18 ones that went out and got somewhere -- again I'm estimating,
19 somewhere in the neighborhood of \$900,000 as a result of this,
20 and they're not here. They're not asked -- being asked to
21 account for their, quote, windfall.

22 So with that, your Honor, I think I've covered -- I don't
23 want to go back and rehash everything in our brief. I think
24 I've covered the salient points. And then I'd ask the Court's
25 permission to put on some live testimony that I think might be

1 important to the resolution of the issues.

2 MR. HILGERS: May I respond briefly, your Honor?

3 THE COURT: Yeah.

4 MR. HILGERS: Certainly whatever the Court will
5 permit, we will certainly do. But I don't think that the
6 discovery -- any live testimony will help or is really germane
7 to the core issue --

8 THE COURT: How do you know until I hear it?

9 MR. HILGERS: Well, that's fair. We didn't hear
10 exactly what that would be, although we heard some snippets.

11 For instance, one of the snippets we heard of what might
12 be put on for testimony is how much TD Ameritrade might be
13 out, two hundred and some thousand dollars. There might be
14 some testimony and evidence as to what loss they might have.

15 Again, when the inquiry is just whether or not we can
16 stand in the shoes of Calissio to trigger this remedy, the
17 loss -- whatever TD Ameritrade -- that's baked into the
18 system. They have 90 days to reverse an error. What the loss
19 is that they may have, that's what the loss is. But that's
20 what the agreement was.

21 There were some other suggestions -- I mean, the whole --
22 really the whole response was let's broaden the inquiry and
23 then try to suggest that there are fact issues or other
24 problems beyond really what the inquiry before the Court is
25 which is should a receiver be appointed just to trigger this

1 rule?

2 So for instance, there's a suggestion that what -- we
3 should go after our customers, that maybe our customers were
4 close to this fraud and that they played a role. Maybe we
5 should go after them.

6 Well, the truth is, your Honor, first, there's no
7 suggestion or real evidence of any kind whatsoever to suggest
8 that they did. But we also know that they were harmed by this
9 fraud. They sold the shares which, as counsel acknowledged,
10 did not have dividend rights for less than \$1 million. And
11 subsequently to that, their accounts got charged for over
12 \$3 million worth of dividends.

13 So if they were in any way complicit with some sort of
14 fraud, they didn't do it -- they didn't it the right way. So
15 there's no suggestion that the customers -- real -- no
16 evidence, real suggestion that they had any role to play, that
17 we should start suing our customers.

18 There's another suggestion, just sort of going in reverse
19 order, your Honor, that, well, the DTC rule doesn't apply as
20 we say it should apply.

21 Well, two points: One, DTC hasn't submitted something,
22 but they haven't objected. And two, if counsel is correct,
23 then DTC will just ignore the receiver. We're not going to
24 all this work, after consultation with DTC, to do this to have
25 a letter sent to DTC that they'll just ignore. This is the

1 communications they've provided to us. They said this is the
2 one remedy. This is the only remedy that we can do to unwind
3 the fraud -- or the error. Because even if it's not a
4 fraud -- and all indications are that it is -- it just needs
5 to be an error.

6 As to the point of the application of the rule, I think
7 that's a pretty constrained reading of the rule, which is that
8 it only applies to errors. It says including but not limited
9 to errors.

10 And errors -- it doesn't say only unintentional errors.
11 Really, kind of flip it on its head to say well, unintentional
12 errors, those are -- those can be reversed. But if you intend
13 to make an error, well, we can't reverse those. That just --
14 I don't think that makes -- that makes much sense.

15 I do want to respond to a couple other points, your
16 Honor. One is that we are trying to blame the shareholders.
17 We're not trying to blame the shareholders. That's not what
18 we're doing.

19 What we're trying to say is the shareholders -- the
20 harm -- the alleged harm is not -- that's not in front of the
21 Court today. Counsel might suggest that all of these other
22 firms are going to go after their customers. Well, the truth
23 of the matter is, 66 of them haven't objected. So we don't
24 know. But we can infer that they don't have this problem
25 because if you're going after your customers and PR issue,

1 boy, that's a problem. So if they think they've got to go
2 after their customers, you'd think they'd be objecting here
3 today. They're not. They're not. They understand the rules
4 of the game. They're abiding by the rules of the game.
5 That's why we think they're not objecting here today. They
6 all received notice.

7 A couple points on the shareholder point, though, that I
8 didn't touch on in my opening but I think is relevant.

9 Two things. The first is, if -- by reversing the
10 dividend, there will be a fund that will go to the Calissio
11 estate, potentially several hundred thousand dollars or more.
12 To that fund can be applied -- creditors could put that into
13 bankruptcy, there could be applied claims, shareholders if
14 they thought they had a remedy, TD Ameritrade if they thought
15 they had a remedy, anyone else could go to Calissio and try to
16 get from that fund. If it's reversed, there will be a fund.

17 Secondly, any of the funds that go back to COR Clearing,
18 my client is not going to provide those directly to their
19 customers. They're going to hold them in escrow to hold
20 against any potential claims from customers of TD Bank or
21 anyone -- or TD Ameritrade or anyone else, just as a
22 safeguard, as a precaution.

23 COR Clearing is not going anywhere. If COR Clearing did
24 something wrong, there's a legitimate claim against COR
25 Clearing or their customers -- or their customers, not COR

1 Clearing, we're going to hold that fund and apply that against
2 any potential proceeds that might -- we don't think there
3 needs to be, but we're going to do it out of an abundance of
4 caution.

5 At the end of the day, Judge, there is the core issues.
6 There was some suggestion that they're hotly disputed.
7 There's no evidence -- everything in the record suggests that
8 this was an error. They admitted it in their brief. It was
9 an error.

10 They might suggest that they haven't had discovery of
11 Calissio, maybe it's not a fraud. It's an error. That's
12 enough. That's enough.

13 The application of the DTC rule, they suggest that maybe
14 it doesn't apply the way we suggest it applies. That's a
15 question for DTC. And if they agree with them, well then
16 they'll just ignore the letter and the receiver will be done,
17 and there will be no -- there will be no action taken.

18 And there's no dispute that after that 90-day period
19 lapses, that money is gone from -- for COR Clearing and
20 Alpine. It is gone. It is gone.

21 So -- one moment, your Honor.

22 (Off-the-record discussion had.)

23 MR. HILGERS: With that, your Honor, we don't
24 think -- there's no suggestion that there's any evidence on
25 those core points. I don't think any testimony is needed.

1 Certainly whatever the Court would like to do, we're happy to
2 do. But we think the record on those issues are discrete,
3 uncontested and --

4 THE COURT: I don't have a lot of time on this, you
5 know. And whether the evidence will help me or hurt me, I
6 don't know. But I want to be sure that we have everything we
7 need to have. You may disagree with what we need to have. He
8 may disagree with what I think we need to have. But I'm going
9 to give him the opportunity to put on the evidence. And if
10 you want to follow with some of your own, you may do so.

11 But how long is this going to take?

12 MR. HARGENS: I don't imagine, collectively with the
13 two, more than an hour, Judge.

14 THE COURT: Does that include cross-examination?

15 MR. HARGENS: I'm assuming Mr. Hilgers isn't going to
16 have much -- but no, it doesn't.

17 THE COURT: It does include --

18 MR. HARGENS: It does not include cross.

19 THE COURT: You say you're going to take an hour to
20 put it on?

21 MR. HARGENS: A total between the two. I'm guessing,
22 but I think that's probably a fair guess.

23 THE COURT: I'll hold you to a half hour on each of
24 them.

25 MR. HARGENS: Thank you, your Honor.

1 Your Honor, I'd call Carlos Salas to the stand. May I
2 inquire sitting down or do I need --

3 THE COURT: You can sit.

4 MR. HARGENS: Thank you.

5 THE COURT: Right here. She has all the power.

6 COURTROOM DEPUTY: Would you please state your full
7 name spelling your first and last name for the record.

8 THE WITNESS: Carlos Pedro Salas, C-a-r-l-o-s
9 P-e-d-r-o S-a-l-a-s.

10 CARLOS SALAS, TD AMERITRADE'S WITNESS, SWORN

11 THE COURT: You'll have to come clear around to the
12 back. Pull that microphone around so that...

13 All right, Mr. Hargens. You may proceed.

14 DIRECT EXAMINATION

15 BY MR. HARGENS:

16 Q. Mr. Salas, you are the chief executive officer of COR
17 Clearing, LLC, the plaintiff in this action; is that correct?

18 A. Yes.

19 Q. And in connection with the motion for appointment of a
20 receiver that we're before the Court on today, you submitted a
21 declaration under penalty of perjury, correct?

22 A. Yes.

23 Q. I want to call your attention to a couple of sections of
24 that.

25 MR. HILGERS: Your Honor -- do you have a copy for

1 the witness?

2 MR. HARGENS: I don't, but I'm going to tell him
3 specifically what he said and just follow up.

4 THE COURT: All right.

5 MR. HILGERS: Judge, I may have a copy for the
6 witness.

7 MR. HARGENS: I can give him a copy if -- there's one
8 in my notebook.

9 THE COURT: Do you have a copy?

10 MR. HILGERS: Let me see if I do. I should.

11 THE COURT: I've got enough paper. I'm sure I do,
12 but I don't have it up here.

13 MR. HARGENS: I've got one, Judge. I can give it to
14 him. I just need to find it.

15 (Off-the-record discussion had.)

16 BY MR. HARGENS:

17 Q. Mr. Salas, I've handed you what was the declaration --

18 THE COURT: Did you mark it as an exhibit?

19 MR. HARGENS: Oh, sorry. May I approach?

20 THE COURT: Why don't you approach him and...

21 MR. HARGENS: Sorry, I need to take that.

22 THE COURT: Hand it to Tiwauna.

23 What number did you give it?

24 COURTROOM DEPUTY: 101.

25 THE COURT: 101.

1 All right. You may inquire.

2 MR. HARGENS: Thank you, your Honor.

3 BY MR. HARGENS:

4 Q. Mr. Salas, you've been handed what's been marked as
5 Exhibit 101 for hearing today. And I'd like -- which is the
6 declaration that was filed in this case on October 5th of
7 2015.

8 Would you turn to paragraph 11 of the declaration. Are
9 you there, sir?

10 A. I am.

11 Q. Okay. You state there that COR's records reflect that
12 between July 29th of 2015 and August 19th of 2015 -- and I'll
13 abbreviate -- Nobilis, through its broker Darbie, a customer
14 of COR, obtained over 327 million shares of stock in Calissio
15 through a conversion of debt to equity.

16 Did I paraphrase that correctly?

17 A. Yes.

18 Q. What records of COR reflect what you state there?

19 A. Well, we have extensive records of shares that are
20 deposited with us to clear.

21 Q. How do you know that there was a conversion of debt to
22 equity that resulted in those 327 million shares?

23 A. That's a good question with an involved answer.

24 We have -- as a corresponding clearing firm, we have
25 certain obligations, regulatory obligations to do a heightened

1 review on deposits of securities that will be sold into the
2 market.

3 And so where you have a situation such as this where you
4 have shares whose provenance is a conversion of a debt
5 instrument, we have a legal and compliance staff that does a
6 fairly extensive review of the note; of the purchase price
7 paid for the note; records that the price was, in fact, paid;
8 assurances that all of the appropriate approvals were
9 received, including, for example, FINRA, our industry
10 regulator's approval. So FINRA, for example, approves all
11 corporate actions, such as dividends, for over-the-counter
12 issuers.

13 So in our case, we have a fairly thick file that shows
14 the extent of the review that was done on this conversion,
15 which is basically you would have the original documents or
16 copies of them. You'd have, you know -- if appropriate, you'd
17 have wire instructions or checks. And you would have a number
18 of attestations from the issuer. And of course, you would
19 have the record of FINRA's approval of the dividends.

20 THE COURT: Who is doing this review that you've just
21 been --

22 THE WITNESS: So your Honor, we have a department
23 that's composed of -- I think it's three full-time employees,
24 plus a compliance staff of about 12 others, who are involved
25 in this review.

1 And what we do -- there's a -- there's a regulatory
2 guidance by FINRA called Notice to Members 09-05.

3 And what it asks the member firms to do is to do a legal
4 review of deposits such as this to ensure that they are either
5 registered or are eligible for an exemption from registration
6 to avoid taking part in an illegal distribution.

7 And so this is a process we do for all of our deposits,
8 all the deposits that we approve for sale. It's something
9 that is time-consuming and expensive for the clients, but is
10 generally pretty thorough.

11 BY MR. HARGENS:

12 Q. So as part of what you referred to as this heightened
13 review, your team would certainly look at the terms of the
14 debt instrument that was going to be converted to common
15 stock, correct?

16 A. I think they would. I think they would look to ensure
17 that the common shares being deposited match the terms.

18 Q. And what type of debt instrument was this? I think you
19 referenced in your testimony a note. Was it a note versus a
20 bond, do you know?

21 A. I don't have personal knowledge. I think it was most
22 likely a private note.

23 Q. Okay. And have you personally reviewed the terms of the
24 note?

25 A. No. I have very competent people that do that on behalf

1 of the firm.

2 Q. Okay. Well, did your very competent people look at the
3 terms of the note to see if it had any restrictions in it on
4 converting debt to equity during the period between a record
5 date and an ex-dividend date of a previously announced
6 dividend?

7 A. I have no way to answer that. I don't know.

8 Q. That wouldn't be unusual, would it, sir, to have
9 something in a debt instrument that would say -- to address
10 this very situation we're dealing with here today -- that you
11 can't convert debt to equity during that time period because
12 of the chaos it would create in tracking a previously
13 disclosed dividend. That wouldn't be unusual, would it, sir?

14 A. I don't have personal knowledge of how those provisions
15 would work. That's not my area of expertise.

16 Q. Okay. Did anybody on your team review the note to see
17 if, under the terms of the note, stock that was converted --
18 excuse me, debt that was converted to stock -- let me start
19 over.

20 Did anybody look at the terms of the note to determine
21 whether the note provided that stock that would be issued
22 pursuant to a conversion would be eligible for previously
23 declared dividends?

24 A. Could you --

25 THE COURT: Do you know whether anybody did that?

1 Not whether they were supposed to or not, I'm not interested
2 in that.

3 A. I don't know personally. I did review that the customary
4 checks were applied with. When I say the customary checks, we
5 are examined by FINRA each year. One of the areas they look
6 at is our processes for this type of approval. So I know that
7 those were done. I don't know the specifics, I haven't read
8 the note.

9 BY MR. HARGENS:

10 Q. So you don't know -- you personally don't know if the
11 note provided that the 327 million shares that were issued
12 pursuant to the conversion, in fact, were eligible for the
13 previously disclosed dividend. Isn't that true?

14 A. I have no personal knowledge of the note.

15 Q. All right. You state at the end of -- well, strike that.
16 There was also a conversion from debt to equity by the
17 company called Beaufort, correct?

18 A. Correct.

19 Q. And that's -- Beaufort is referred to in paragraph 12 of
20 your declaration, correct?

21 A. Yes, I see it in there.

22 Q. Okay. And I think we have to fast-forward in your
23 declaration. I'll see if I can find it. But my recollection
24 is that you indicated that Beaufort converted 90 million
25 shares of debt to equity in Calissio; is that correct?

1 A. If that's what it says, it's correct. I don't have it in
2 front of me. I don't remember the number.

3 Q. You indicate in paragraph 12 of your declaration that
4 Nobilis sold its shares for, quote, only \$700,000. Do you see
5 that?

6 A. I do.

7 Q. Why do you say only \$700,000?

8 A. Well, only 700,000 because the liability they created for
9 themselves through this process was much greater than that.

10 Q. You're not suggesting that they sold it for a low price
11 given the market conditions?

12 A. I'm not sure I understand your question.

13 Q. Well, let me ask you this: How do you know they sold the
14 converted shares -- I'll call them the converted shares, okay?
15 -- for \$700,000?

16 A. Because they would have received proceeds for the sales
17 that we would have in their account at our firm.

18 Q. So Nobilis was a customer of COR?

19 A. Nobilis is a customer of our introducing firm,
20 J.H. Darbie. J.H. Darbie has a clearing contract with us. So
21 we do settlement and custody for J.H. Darbie and its
22 customers.

23 Q. What, if any, relationship is there between Darbie and
24 COR other than what you just described? Is there any
25 affiliation by common ownership, for example?

1 A. No. Our relationship, I think, is limited to a clearing
2 agreement that provides for our provision of services for
3 clearing and custody to Darbie.

4 Q. Was Nobilis aware that the stock that had been converted
5 from debt to equity was not eligible for the dividend?

6 MR. HILGERS: Objection, your Honor, calls for
7 speculation.

8 THE COURT: Yup. There's no jury present. I
9 understand your objection. I'll let him answer the question.

10 A. Well first, I don't know what Nobilis was aware of or
11 not. But I would find it strange that they would sell for
12 \$700,000 a stock that would bring with it a debit in the
13 millions.

14 In other words, it makes no sense for Nobilis to have
15 known that a dividend would, you know -- a due bill would
16 accrue here, given the price that they sold it at.

17 BY MR. HARGENS:

18 Q. But other than that -- you've never had any discussions
19 with Nobilis, for example, to determine whether they knew that
20 this qualified for a dividend or not?

21 A. No, I have had discussions with Nobilis. And they claim
22 not to have known that it qualified for a dividend.

23 Q. Okay.

24 A. And I don't believe it does, by the way.

25 Q. Have you made any claim against -- you, when I say you,

1 COR -- has COR made any claims against Darbie as a result of
2 this conversion of debt to equity or the subsequent sale of
3 the shares that were issued as a result?

4 A. Yes, in the following sense: We approached Darbie with
5 this. They understood their liability to our firm for
6 indemnification against errors or any losses caused by their
7 activity or customers' activity.

8 And so Darbie paid to our firm a half million dollars in
9 exchange for which I permitted -- or the firm permitted the
10 remaining unsecured debit balance to be owed to us by Darbie
11 in the form of an unsecured -- excuse me -- yeah, an unsecured
12 but a subordinated note.

13 Q. Okay. So there was an agreement between Darbie and COR
14 whereby Darbie paid COR \$500,000, first of all, correct?

15 A. Correct.

16 Q. And then there's a subordinated note from Darbie to COR
17 in the amount of how much?

18 A. 1.2 million -- or thereabouts, about 1.2 million.

19 Q. And so collectively that's roughly \$1.7 million; is that
20 right?

21 A. Correct.

22 Q. And is it just a coincidence that that matches up with
23 the \$1.7 million that I heard Mr. Hilgers mention earlier as
24 the amount that you guys believe was paid in dividends to
25 Calissio?

1 A. That is a coincidence. I think Mr. Hilgers derived his
2 number by reviewing Calissio's public pronouncements regarding
3 the number of shares that they repurchased.

4 But I can explain to you how the 1.7 at Darbie came to
5 be.

6 Q. You anticipate my next question, sir. Please explain how
7 you came up with the 1.7.

8 A. So -- and again, I don't have all the numbers in front of
9 me. But roughly speaking, let's say it's a \$4 million debit
10 that was taken from COR Clearing's account on behalf of these
11 customer activities.

12 We have indemnification agreements with customers and
13 with our introducing brokers so that COR, as a clearing and
14 settlement firm, is indemnified against the actions of, again,
15 customers and brokers.

16 And so in this case, what happened is we immediately
17 froze the customers' accounts. They had other assets in those
18 accounts. I think the majority were probably sale proceeds
19 from the Calissio shares that they sold.

20 We took those assets in satisfaction -- in partial
21 satisfaction of our indemnification rights against our
22 customers. And that left a remaining balance that I believe
23 was 1.7. And I'm trying to think if there were other things
24 that -- I think that was the math of it.

25 So in other words, we exercised, you know, our

1 established right of self-help and indemnification against the
2 remaining assets in these accounts. And then the uncovered --
3 the unsecured debit, if you will, that remained, we imposed on
4 J.H. Darbie and did it through a partial cash payment, and
5 then a subordination of our remaining rights against Darbie
6 subordinating any below their other creditors and customers.

7 Q. Just so I understand, did you exercise similar rights
8 that you did with respect to Darbie regarding the other -- I'm
9 ballparking it -- \$2.3 million of the \$4 million credit
10 against other introducing brokers like Darbie?

11 A. Can you repeat or rephrase the question?

12 Q. I'll try.

13 As you've described it, you exercised self-help with
14 respect to Darbie, right?

15 A. No. Our -- we negotiated with Darbie because we didn't
16 have enough assets of Darbie on hand to do that, yeah.

17 Q. Okay. Did you have similar agreements with any other
18 entities other than Darbie?

19 A. Well, it depends a little bit what you mean. We have
20 very similar agreements in place with all our introducing
21 firms. I'm not aware that any of our other introducing firms
22 were either on the debit or credit side of this equation, of
23 this instance.

24 THE COURT: By this equation, you're talking about
25 this transaction?

1 THE WITNESS: The Calissio transaction, yes, your
2 Honor.

3 BY MR. HARGENS:

4 Q. Sir, I want to shift gears for a minute.

5 Assuming that the stock -- the three hundred and -- well,
6 I believe that the total number of shares -- and I think the
7 record will reflect, I won't ask you to agree on this, but I
8 believe the total shares between Calissio -- excuse me,
9 between Nobilis and Beaufort that were issued as a result of
10 the conversion approximates 475 million shares. And I'd just
11 ask you to assume that for me.

12 But, assuming that those shares were not eligible for the
13 previously declared dividend -- which I understand is COR's
14 position in this case -- as there is activity in that stock
15 between the record date and the ex-dividend date, how is DTC
16 supposed to know that?

17 A. Are you asking how would they know that there were
18 deposits of new shares coming in?

19 Q. No. How would they know that the shares being traded by
20 Nobilis and Beaufort were, in fact, not eligible for the
21 dividend?

22 A. Well, I think you've identified the crux of the issue
23 with DTC's process.

24 So it's, first of all, unusual that you would have a
25 period between the record date, which establishes which shares

1 are eligible for a dividend, and the ex-dividend date that, in
2 this case, is 45 days later, which establishes which parties
3 that have been purchasing shares are eligible for the transfer
4 of that dividend. So that's unusual in the first case.

5 And I think the problem that DTC has and the reason that
6 it did what it did in this case and debit our accounts is that
7 DTC holds common shares of any specific issuer unless they're
8 issued in a different tranche or, you know, are preferred
9 shares or something else, they hold them in a common bin, if
10 you will, under a CUSIP number.

11 And so DTC has a problem that despite the legal fact that
12 shares that were not in existence after the record date are
13 not entitled to a dividend, they have a practical limitation
14 in that they can't distinguish by the ex-dividend date who
15 bought which shares.

16 So it's an imperfect system. DTC does the best it can in
17 the sense that it just pays the dividend out on all the
18 shares. But that's why it provides for this clawback
19 mechanism where if there is a manifest error or an inequity,
20 there's a very simple way to redress it.

21 Q. So back to my question. Is there any way for DTC to
22 determine, as it's tracking interim activity between a record
23 date and an ex-dividend date, whether a particular share of
24 stock does or does not qualify for a previously declared
25 dividend?

1 A. I don't believe they do. I believe that there certainly
2 are things they could do to identify shares by issuance date.
3 But I don't believe that's practically what they do.

4 Q. Did -- well, COR knew at the time of this conversion that
5 the stock that was being issued was not eligible for a
6 dividend; isn't that right?

7 A. Yes, that's factual. Right.

8 Q. Did COR take any action to alert DTC that there was some
9 400-plus million shares of stock being dumped on the market
10 that was not eligible for a dividend?

11 A. No. I think that would be the role of the transfer
12 agent.

13 Q. And the transfer agent here is Signature Stock Transfer,
14 Inc., correct?

15 A. Correct.

16 Q. And COR has sued them because COR believes that Signature
17 Stock Transfer, Inc. was part of the fraud perpetrated by
18 Calissio. Isn't that right, sir?

19 A. Yes.

20 Q. If Judge Strom were to grant the relief requested today
21 and a receiver is appointed with directions to notify DTC that
22 Calissio wants the entire dividend credit and debit process
23 reversed, and as a result COR is credited \$4 million, is COR
24 going to give Darbie its half million dollars back and cancel
25 that note?

1 A. That's also a very good question. I'm happy to address
2 it.

3 What we will do if we receive a return of the proceeds is
4 we will withhold from the customers -- from Nobilis and
5 Beaufort -- the amount of the sale proceeds they received in
6 the sale of those shares.

7 And so what will happen is we will not return to them the
8 assets that we sought in indemnity because we would anticipate
9 that there's a likelihood or a possibility of other customer
10 claims; maybe your customers, for example, would seek a
11 complaint against, you know, Nobilis. And typically when that
12 happens, they would go against Nobilis and Darbie and COR.

13 And so we would retain those assets because we would
14 anticipate that there would be customers coming after them.

15 Q. Has COR frozen the accounts of Nobilis and Beaufort?

16 A. Yes. We did that day one.

17 Q. How much is in those accounts?

18 A. I don't have the numbers at hand, but it's -- I think
19 it's the balance between, you know, the 1.77 and the 3.7, so
20 it's probably -- I think it's between 1.4 and \$2 million.

21 Q. And that's in addition to the amount represented by the
22 Darbie payment and note; is that right?

23 A. Yes. And again, I'm not prepared for this testimony, but
24 I think that's right. I mean, I think basically what we did
25 is we took the amount that we were out, we reduced our

1 exposure by taking the proceeds and assets from the Nobilis
2 and Beaufort accounts, and then we negotiated with Darbie
3 their indemnification of the remaining exposure.

4 Q. Why did you freeze the accounts of Nobilis and Beaufort?

5 A. Well, we froze them primarily because we have a right to
6 assets in those accounts in the event that they cause us a
7 loss. And so they caused us a loss.

8 Q. How did they cause you a loss?

9 A. Because sales that originated with them have resulted in
10 DTC taking our money and spreading it around the street.

11 MR. HARGENS: Your Honor, may I have just a moment to
12 confer?

13 (Off-the-record discussion had.)

14 MR. HARGENS: I have no further questions.

15 THE COURT: Any cross?

16 MR. HILGERS: Just briefly, your Honor.

17 CROSS-EXAMINATION

18 BY MR. HILGERS:

19 Q. Mr. Salas, I believe you testified that COR Clearing
20 froze the accounts of Nobilis and Beaufort; is that right?

21 A. Correct.

22 Q. Did either of those entities agree with your decision to
23 freeze their accounts?

24 A. No, on the contrary.

25 Q. What do you mean by that?

1 A. They both filed arbitrations against COR.

2 Q. I believe you also testified that you would hold -- COR
3 would hold some money in reserve for any potential customer
4 complaints. Is that accurate?

5 A. Yes, but let me be clear about it. We will hold -- all
6 the money that we took -- we took from those accounts, we are
7 not going to repay and have no obligation to repay Nobilis or
8 Beaufort until it's clear that we have no further need for
9 indemnification. I think as it stands right now, very clearly
10 there's the threats, if not the reality, of folks seeking that
11 money.

12 Q. If it turns out that there is no need for
13 indemnification, what will happen to those funds?

14 A. If there is no need for indemnification, if everything
15 settles out or is cleared, then they would be released back to
16 them.

17 Q. In light of -- there's been some testimony regarding some
18 assets that have been frozen, some indemnification rights, a
19 note. If the Court does not grant the receiver, will COR
20 Clearing be made whole?

21 A. No. I think it's exceedingly unlikely.

22 Q. Why do you say that?

23 A. We have a judgment against one entity that I think we
24 know to a certainty is insolvent, which is Calissio, and
25 another entity that, from our experience in the market, is

1 unlikely to be solvent, the transfer agent.

2 Transfer agents are typically very small mom-and-pop
3 businesses that don't have the requirements to hold capital
4 that firms like mine have.

5 Q. When did you learn about the dividend that was issued --
6 I'm sorry, the due bills that were attached to the Nobilis and
7 Beaufort shares?

8 A. We learned about them essentially the day of -- or the
9 day before the dividend payments were made by DTC.

10 And the reason for that is DTC provides you some tools
11 for visibility and activity in your account, but the only one
12 that has any lead time associated with it is a forecast of
13 your cash balance. And that only goes out seven days.

14 And so, you know, I surmise that operations saw that the
15 cash balances changed during that period, but we settle a
16 large number of transactions. So it's not the type of thing
17 that would jump out at you.

18 And we'd had discussions with DTC about better tools, but
19 they tell us this is as much as you can get.

20 Q. What did you do after you found out about the ineligible
21 dividends?

22 A. Well, we immediately engaged with DTC. We informed them
23 that they'd made a manifest error. And that's where we began
24 the discussion with DTC regarding, you know, their inability
25 to act without an instruction from the issuer.

1 But we also demanded that DTC do two things: One is
2 provide us the identity of the other member firms that had
3 received the credits for the dividend so that we could notify
4 them so that they could hold those assets and prevent losses.
5 And we also demanded that DTC notify them.

6 So I know that notifications went out. They went out a
7 few days later. And we took the list of notifications that
8 they sent and followed up on our own.

9 I also went and met with the Securities and Exchange
10 Commission in Washington to describe to them my concerns about
11 what had happened here, both with respect to Calissio and with
12 respect to this very novel fraud on the DTC system.

13 Q. We showed on the screen earlier that there was the DTC
14 Distribution Service Guide. Do you recall that?

15 A. Yes.

16 Q. Have you seen that before?

17 A. Yes, I have seen that. Yes.

18 Q. And you saw the language about the 90-day post payable
19 allocation correction language that we showed?

20 A. Yes. I've seen that language and discussed it with DTC.

21 Q. And what is your understanding of DTC's view of how that
22 language should be applied in this instance?

23 MR. HARGENS: Objection, hearsay.

24 MR. HILGERS: I'm just asking for his understanding.

25 THE COURT: Overruled. He may answer.

1 A. DT- -- that language -- a couple things. I think we
2 noted that language. We discussed it with DTC. We
3 interpreted it initially to permit the transfer agent to
4 initiate a reversal of the dividends.

5 DTC disagreed. They did point us back to the language
6 though and suggested to us, as we were pressing DTC to fix
7 this error, that they would abide by an instruction from the
8 issuer or a receiver for the issuer to make that change.

9 And I think the language is very important to DTC because
10 of where they sit in the marketplace. They settle trillions
11 of dollars of transactions. They seem to me to be very
12 concerned about setting a precedent that they need to exercise
13 any sort of discretion or judgment in evaluating whether their
14 system has functioned correctly.

15 And so their zone of comfort is to have clear
16 instructions from third parties to take any action. And so
17 this process was pointed to us by DTC as the most appropriate
18 way to proceed.

19 Q. And when you say "this process", are you referring to a
20 limited purpose receiver?

21 A. Yes.

22 Q. Who generally bears the responsibility for a customer's
23 loss?

24 MR. HARGENS: Objection, legal conclusion.

25 THE COURT: Are we -- I don't have any time past noon

1 so...

2 MR. HILGERS: I only have a couple -- I have about
3 three questions left, Judge, and then I'll pass the witness
4 back.

5 THE COURT: We've got to finish everything this
6 morning.

7 MR. HILGERS: I understand.

8 THE COURT: Okay.

9 A. I'm sorry, who bears the --

10 BY MR. HILGERS:

11 Q. Who bears responsibility for a customer's loss?

12 A. Well, in the first instance, the customer. But there are
13 certainly situations where a customer experiences a loss
14 because there was a regulatory deficiency or a fiduciary
15 deficiency at his brokerage.

16 So, for example, if Ameritrade were to basically
17 determine that one of its customers didn't have the
18 suitability, didn't have the experience, the liquidity, the
19 risk appetite to speculate in penny stocks and they bore a
20 loss, then the customer may have a claim against Ameritrade.

21 Q. Just briefly, just to finish up, we looked at your
22 declaration a little earlier. Do you recall that, sir?

23 A. Yes.

24 Q. Looking at paragraphs 11 and 12 and having them in front
25 of you now, is there anything -- well, strike that.

1 Did you review -- before submitting that declaration, did
2 you review COR Clearing's records as it related to those
3 paragraphs 11 and 12?

4 A. Oh, yes. I mean, I reviewed -- I had extensive
5 discussions with the staff who was involved in this. I
6 received descriptions about what they'd done. And I'd seen
7 certainly some of the records that support these statements,
8 of course.

9 Q. And paragraphs 11 and 12, and in fact, your whole
10 declaration, were those based on your personal knowledge and
11 review of COR Clearing's records?

12 A. They were based on my knowledge and review of the records
13 that were shown to me by my staff and my interviews with the
14 staff who was primarily responsible for these things, yes.

15 MR. HILGERS: Pass the witness, your Honor.

16 THE COURT: Mr. Hargens?

17 MR. HARGENS: No further questions, your Honor.

18 THE COURT: You may step down.

19 MR. HARGENS: Your Honor, I call Chad Johnsen to the
20 stand.

21 THE COURT: We have to leave some time for your
22 adversary over here.

23 MR. HARGENS: Yes, your Honor.

24 THE COURT: So I'll give you about ten minutes with
25 him and no more.

1 MR. HARGENS: I'll take whatever I can get.

2 COURTROOM DEPUTY: Would you please state your full
3 name, spelling your first and last name, for the record.

4 THE WITNESS: Chad Ryan Johnsen, C-h-a-d
5 J-o-h-n-s-e-n.

6 CHAD JOHNSEN, TD AMERITRADE'S WITNESS, SWORN

7 MR. HILGERS: Your Honor, before he begins the
8 examination, we have the exhibit from the witness.

9 Tiwauna, do you -- may I approach?

10 THE COURT: Yes.

11 You may proceed.

12 MR. HARGENS: Thank you, your Honor.

13 DIRECT EXAMINATION

14 BY MR. HARGENS:

15 Q. Mr. Johnsen, are you employed?

16 A. Yes.

17 Q. Where are you employed?

18 A. TD Ameritrade Clearing.

19 Q. And what is your position there?

20 A. I'm a senior manager of global corporate actions.

21 Q. How long have you been employed by TD Ameritrade?

22 A. Just over ten years.

23 Q. Can you describe briefly for the Court what your
24 responsibilities have been in your current position, which I
25 understand you've held for roughly six years; is that right?

1 A. Correct, yes.

2 For the last six years, I've been a senior manager of
3 global corporate actions. I oversee multiple teams that deal
4 with the processing of reorganization events, as well as
5 dividends, distributions, interest payments, and the like.

6 Q. Okay. And you submitted a declaration in this case in
7 opposition to COR's motion for appointment of a receiver,
8 correct?

9 A. Correct.

10 Q. In the course of your employment, are you familiar with
11 the process that a clearing company like COR or in the case of
12 TD Ameritrade's affiliated clearing company, TD Ameritrade
13 Clearing, undertakes in the event of a issuance of stock as a
14 result of a conversion of debt to equity?

15 A. Yes, I'm familiar with that.

16 Q. Okay. Can you describe for us the process that a company
17 in the position of TD Ameritrade Clearing or COR would
18 normally go through to conduct investigation in connection
19 with a debt-to-equity conversion?

20 A. Yes. Typically there's going to be a prospectus for the
21 notes. And there may be a supplemental prospectus that would
22 step through the terms of a conversion. A debt-to-equity
23 conversion or debt-to-anything conversion, there would be
24 terms for that.

25 A client that has the beneficial ownership of those

1 notes, that actually owns them, would provide an instruction
2 that they wanted to convert or exercise their conversion
3 rights.

4 And then the firm typically would review that information
5 to see what the terms are and if they can provide an
6 instruction to the transfer agent or to whom can actually
7 affect that transaction for their client.

8 There would be a transfer of the notes to a transfer
9 agent or somebody who is able to affect that transaction and
10 then a transfer of common stock back in on a conversion.

11 Q. Okay. Would a part of the process be what Mr. Salas had
12 described to review the terms of the debt instrument to
13 determine what, if any, impact it had on eligibility of the
14 stock for any outstanding declared dividends?

15 A. Yes.

16 Q. What would be done in that regard?

17 A. Well, typically in the prospectus or a supplemental
18 prospectus there's going to be a clause that will state how
19 that type of situation should be handled.

20 So the conversion terms may state that between record
21 date and payable date of a div event, no conversions are
22 possible, for example. Or they might state that if you
23 convert between record and payable, that you'll be treated as
24 a record date holder and paid the distribution.

25 Or they may state that if you convert between record and

1 payable date of an event, that's -- the conversion terms would
2 be updated or amended to account for the fact that there's
3 been a distribution on the common stock.

4 Q. Is it unusual -- let me state -- is there anything that
5 would prohibit the terms of the note to provide that stock
6 that's issued in connection with a debt-to-equity conversion
7 would be eligible for a previously declared dividend?

8 A. I don't think I quite follow that.

9 Q. Okay.

10 A. Sorry.

11 Q. Well, is -- would it be unusual or inappropriate for the
12 terms of the note or other debt instrument to provide that
13 stock that is going to be issued as a result of the
14 conversion, even though it's issued after the record date of a
15 previously declared dividend, would nevertheless be eligible
16 for the dividend?

17 A. That is possible, yes.

18 Q. And we've not seen the terms of whatever debt instrument
19 or instruments were held by Nobilis or Beaufort that were,
20 according to the position of COR in this case, converted.
21 Isn't that true?

22 A. That is correct.

23 Q. So we don't know at this point what, if any, provisions
24 might have been in there regarding whether these dividend --
25 or the stock that was apparently sold by Nobilis and Beaufort

1 in the weeks leading up to the ex-dividend date did or did not
2 qualify for the dividend. Is that true?

3 A. Correct.

4 Q. How can DTC track during this interim activity period
5 whether a particular stock is eligible or isn't eligible for a
6 previously declared dividend?

7 A. They have no means of doing so.

8 Q. Does that concern you?

9 A. No.

10 Q. Why?

11 A. It's complex to explain, but essentially DTC has the
12 mechanisms in place to track that trading that occurs between
13 record and payable, to move funds from participant to
14 participant based on, you know, the buying and selling
15 activities.

16 And any other shares that are introduced to that system,
17 you know, DTC has spelled out very clearly in their
18 Distribution Guide how those are handled.

19 Q. And you're familiar with the terms of DTC's Service
20 Guide, are you not?

21 A. I am.

22 Q. Based upon that familiarity, did DTC do or not do
23 anything with respect to the Calissio shares in issue here
24 that's specified in the Guide?

25 A. In my view, they handled them exactly as they should have

1 been handled pursuant to their Distribution Guide.

2 Q. Sir, as part of your declaration, you provided some
3 numbers to the Court regarding the number of accounts that had
4 transacted in Calissio stock that received credits for the
5 dividends that are in issue here, the amount of those credits,
6 and the amount that TD Ameritrade stands to lose in the event
7 that it does reverse those credits and is forced to go collect
8 amounts that aren't in the accounts. Do you recall that?

9 A. Yes.

10 Q. Have you updated those numbers since your declaration was
11 submitted?

12 A. Yes.

13 Q. And can you just tell the Court what the number of
14 accounts is, the number of the total dividends, and then the
15 amount that TD Ameritrade may be forced to go collect from
16 clients because they don't have funds in the account to
17 reverse at this point?

18 A. Certainly. I believe the total number of accounts is
19 764, if I recall correctly. The total funds originally
20 distributed were approximately 934,000.

21 And as of, I believe, yesterday, were TD Ameritrade to
22 reverse that distribution, there would be unsecured, in other
23 words, clients that don't have those funds in the account any
24 longer, in the amount of approximately \$220,000.

25 MR. HARGENS: No further questions, your Honor.

1 THE COURT: Any cross?

2 MR. HILGERS: Yes, your Honor, just a few questions.

3 (Off-the-record discussion had.)

4 CROSS-EXAMINATION

5 BY MR. HILGERS:

6 Q. Do you know -- you just referenced your review of the
7 records of TD Ameritrade's customers and their share
8 transaction activity. Do you know how much your customers
9 paid for the shares of Calissio stock that they purchased?

10 A. I do not.

11 Q. You spoke about a prospectus. Do you recall that
12 testimony?

13 A. Yes.

14 Q. A prospectus is involved with a bond; isn't that right?

15 A. Correct.

16 Q. You wouldn't have a prospectus for a note, correct?

17 A. Note and bond are somewhat synonymous terms.

18 Q. Well, those are two different things, aren't they?

19 A. They can be used very interchangeably in my experience.

20 Q. A private note not issued to the public is not equivalent
21 to a bond, correct?

22 A. Correct.

23 Q. You understand that the record date here is June 30th,
24 2015, right?

25 A. Yes.

1 Q. And any share issued after that record date is ineligible
2 for a dividend, correct?

3 A. No.

4 Q. Why?

5 A. As I said earlier, potentially in a prospectus
6 supplement, in the event of a conversion, it could be
7 specified that shares could be treated as a record date holder
8 and eligible for dividend payment.

9 Q. Could be. Do you have any personal knowledge, sir --

10 A. No.

11 Q. -- that -- let me finish my question.

12 A. Certainly.

13 Q. Do you have any personal knowledge, sir, that any shares
14 issued after June 30th, 2015, after the record date, were
15 eligible for a dividend?

16 A. I do not.

17 Q. And you sat through Mr. Salas's testimony, did you not,
18 sir?

19 A. Yes.

20 Q. And you heard his description of the review of the
21 records of COR Clearing, correct?

22 A. Yes.

23 Q. Do you have any reason to disagree with his testimony
24 that he did not see anything that suggested those shares would
25 be eligible even after issued after the record date?

1 A. I do not.

2 Q. And you work for TD Ameritrade, correct?

3 A. Yes.

4 Q. And you have no personal knowledge how other member firms
5 are reacting to this motion to have a limited purpose receiver
6 appointed, are you?

7 A. I'm familiar with E-Trade as we've referenced earlier.
8 Beyond that, not significantly.

9 Q. So you don't have any personal knowledge of whether
10 those -- any of those member firms intend to collect any
11 monies whatsoever from their customers, do you?

12 A. I do not.

13 Q. Do you recall submitting a declaration to the Court in
14 support of TD Ameritrade's opposition to this motion?

15 A. Yes.

16 MR. HILGERS: I don't have a spare extra copy, but we
17 have a copy of the declaration for the screen. I'm not going
18 to submit it as evidence, I just want to reference it for the
19 witness.

20 THE COURT: It's on the screen.

21 THE WITNESS: The screen is dark. There it goes.

22 MR. HILGERS: You see it?

23 THE WITNESS: Yes.

24 BY MR. HILGERS:

25 Q. What we've called out here is just the part -- the first

1 two paragraphs of your declaration. Do you see that, sir?

2 A. Yes.

3 Q. Do you recall signing this declaration under penalty of
4 perjury?

5 A. Yes.

6 MR. HILGERS: If we could turn to page 4 and footnote
7 1, would you call that out and highlight it?

8 BY MR. HILGERS:

9 Q. I'll read this briefly.

10 It is -- it says: It is my understanding that another
11 broker-dealer has either restricted its clients from accessing
12 these funds or has already reversed said funds. Removing
13 funds from client accounts absent a court order directing a
14 broker-dealer to do so is unusual and contrary to the firm's
15 policies. Accordingly, no such action has been taken by TDA
16 at this time.

17 Do you see that, sir?

18 A. Yes.

19 Q. Did I read that correctly?

20 A. Yes.

21 Q. Do you understand the relief that my client, COR
22 Clearing, is seeking from the Court today?

23 A. I believe so.

24 Q. Do you understand that that relief -- that COR Clearing
25 -- strike that.

1 Do you understand, sir, that COR Clearing is not asking
2 for an order that would order your firm to take any money from
3 your customer accounts? Do you understand that?

4 A. Yes.

5 Q. You were here when we showed the email from Mr. Carter on
6 August 20th. Do you recall that?

7 A. Yes.

8 Q. Where he said there's a huge glitch and error. Do you
9 recall that?

10 A. Yes.

11 Q. And we don't need to pull it back up, but did you see
12 when we discussed the TD Ameritrade brief where it said that
13 some of the credit -- or the credits to the member firms were
14 inappropriately given. Do you recall that?

15 A. I recall that.

16 Q. Do you have any personal knowledge or reason to believe
17 that that was not an error?

18 A. It was not an error on the part of DTC to track those
19 sales with due bills. So I guess I don't quite understand
20 your question.

21 Q. You'd agree with me, wouldn't you, that debiting funds as
22 part of a -- strike that.

23 You would agree with me, sir, that it's inappropriate --
24 or in error to pay money -- to pay a dividend to a share that
25 is otherwise ineligible to receive such a dividend, right?

1 A. I don't know quite how to answer that.

2 Q. If you don't have a right to a dividend and you receive a
3 dividend, that's an error, isn't it?

4 A. I don't know that it can be boiled down quite that
5 simply.

6 Q. So is the answer no or yes?

7 A. I don't know.

8 Q. You're not --

9 A. They're -- may I explain?

10 Q. Sure.

11 A. If there's a representation made that the share qualifies
12 for a dividend, if it's trading prior to ex-date, ex-dividend
13 date on the markets, that would generally imply that there is
14 a dividend included. So that's why I'm not quite sure exactly
15 how to answer your question.

16 Q. Are you suggesting that COR Clearing made a
17 representation that there was a dividend included with those
18 shares?

19 A. By selling through DTC, using DTC's settlement services
20 which tracks interim activity, in that situation, yes.

21 Q. Are you -- you're saying that those shares should -- are
22 eligible -- even after the record date, they're eligible for
23 dividends?

24 A. I'm stating they were represented as eligible.

25 Q. Are there therefore eligible, sir?

1 A. I don't know. I've not examined terms of any note.

2 Q. Do you have any reason to believe that they're eligible?

3 A. I don't know. I've not seen any terms. So no, I do not.

4 I also have no reason to believe they're not eligible.

5 (Off-the-record discussion had.)

6 MR. HILGERS: No further questions.

7 MR. HARGENS: Just a quick follow-up, your Honor.

8 THE COURT: Okay.

9 REDIRECT EXAMINATION

10 BY MR. HARGENS:

11 Q. In the event that the Court were to order the appointment
12 of a receiver that directs DTC to reverse the credit of 900
13 and roughly 40 thousand dollars -- 934, that was previously
14 given to TD Ameritrade Clearing, what is TD Ameritrade
15 Clearing and, in turn, TD Ameritrade going to do?

16 A. We would unwind those funds or reverse those funds, if
17 you will, from our client accounts who were originally paid.

18 Q. And in that fashion, what TD Ameritrade would be doing
19 doesn't sound much different than what COR has apparently done
20 with Nobilis and Beaufort if the clearing company or the
21 initiating broker incurs a loss as a result of trading in the
22 account, the clearing house and initiating broker is going to
23 reverse that transaction, right?

24 MR. HILGERS: Objection, leading, your Honor.

25 THE COURT: He may answer.

1 A. Yes, that's correct.

2 MR. HARGENS: No further questions.

3 THE COURT: You may step down.

4 Do you have any other evidence?

5 MR. HARGENS: No, your Honor.

6 THE COURT: He's finished.

7 Do you have any other evidence other than what you've
8 developed?

9 MR. HILGERS: Other than what we've developed and
10 what we've previously submitted to the Court via declaration,
11 we have no other evidence, your Honor.

12 THE COURT: So I can consider this matter submitted.

13 MR. HILGERS: Yes, sir.

14 MR. HARGENS: Yes, your Honor.

15 THE COURT: I need the time, so we'll be in recess.

16 And thank you. I will admit that this has helped me.
17 Hopefully -- one of you will be unhappy, the other will be --
18 I wish I had some way of doing it so both of you would be
19 happy, but I haven't figured that one out yet.

20 Okay. We're in recess.

21 (Adjourned at 10:45 a.m.)

22 I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

23

24 /s/ Brenda L. Fauber
Brenda L. Fauber, RDR, CRR

December 1, 2015
Date

25